



Indiana Judicial Nominating Commission

30 South Meridian Street, Suite 500
Indianapolis, IN 46204
(317) 232-4706

Application for the Indiana Supreme Court

The application for the Spring 2016 vacancy on the Indiana Supreme Court includes two parts. Both Part One and Part Two must be completed. Part Two *must* be provided separately as directed in the instructions. Answers in Part One and Part Two are a matter of public record and will be supplied to the media and public upon request. However, only answers in Part One may be posted online by the Indiana Judicial Nominating Commission.

Part One, Sections 1-11

1. Contact/General Information

A. Full legal name and any former names.

Thomas Porter Yoder

B. State the full name (use initials for minor children), age, and relationship of each person residing in your household. For each adult living in the household (other than yourself), also state the person's occupation and employer.

Sheryl Ann Yoder, age 62, spouse (35 years), substitute high school teacher, Southwest Allen County Community Schools, Fort Wayne, Indiana.

C. Business address, email, and telephone number.

**Barrett McNaghy LLP
215 East Berry Street
Fort Wayne, Indiana 46802
tpy@barrettlaw.com
260-423-8845 – direct dial**

D. Attorney number.

1429-02

E. Month and year you were admitted to the Indiana Bar.

October, 1977

a. Indicate current law license status, i.e. active/inactive/retired.

Active.

- b. If you are or have been a member of the Bar of any other state, identify the jurisdiction and provide date(s) of admission and current license status.

None.

- F. Date and place of birth.

Date of Birth: April 8, 1952. Place of Birth: Pullman, Washington

- G. County of current residence and date you first became a resident.

Allen County. Resident since 1953.

2. Secondary Education/Military Experience

- A. List all undergraduate colleges and universities you attended. Include the school name; dates enrolled; degree or certificate earned; and any academic honors, awards, or scholarships you received and when.

Hanover College, Bachelor of Arts (1970-1974)

Academic Honors: Cum Laude (1974), Gamma Sigma Pi (1973), Departmental Honors (History), Danforth Scholar.

- B. Include with your original application a certified transcript from each school named in Subsection 2A, and attach copies of each transcript to each application copy. (If your social security number is on your transcripts, redact it *before* copying.)

See attached.

- C. If applicable, list any military service. Include the name of the military branch; dates of service; last rank achieved; and any honors, awards, or commendations received and when. Attach a copy of your Certificate of Release or Discharge from active duty ("DD 214" paperwork).

None.

3. Post-Secondary Education

- A. List all law schools, graduate schools, and post-J.D. programs attended. Include the school name; dates enrolled; degree or certificate earned; class rank; and any academic honors, awards, or scholarships you received and when.

Indiana University Mauer School of Law. Dates Enrolled: 1974-1977. Degree: Doctor of Jurisprudence. Class Rank: Unknown. Awards: Member, Student Legal Alliance (SLA), awarded national recognition for series of free pamphlets distributed to the public regarding various consumer legal rights, Co-Author "Rights Upon Arrest" (1974).

- B. Include with your original application a certified transcript from each school named in Subsection 3A, and attach copies of each transcript to each application copy. (If your social security number is on your transcripts, redact it *before* copying.)

See attached.

4. Employment

- A. Provide your employment history since graduation from college. Include name of employer, titles or positions, locations, and dates of employment.

Student behavioral therapist, Englishton Park Children's Program; Lexington, Indiana (Summer, 1974).

Summer Associate / Associate / Partner, Miller, Carson & Boxberger f/k/a Livingston, Dildine, Haynie & Yoder, Fort Wayne, Indiana (1976-1989).

Partner, Barrett McNagny LLP, Fort Wayne, Indiana (1989-present).

- B. If applicable, describe the nature and extent of your practice of law (present and former), and provide the names of your partners, associates, office mates, and employers.

I have been an attorney continuously in private practice in Fort Wayne, Indiana, since 1977. During such period of time, I have been employed by Miller, Carson & Boxberger (approximately 25 lawyers) and Barrett McNagny LLP (approximately 50 lawyers). Since 1980, I have specialized almost exclusively in business bankruptcy (Chapter 11), debtor-creditor relations and other insolvency – related State and Federal law, as well as associated commercial transactions and litigation. A current roster of Barrett McNagny partners and associates is attached as Exhibit "A".

5. Trial/Judicial Experience

- A. Describe the extent of your jury trial experience, if any.

There are no jury trials in 7th Circuit Bankruptcy Courts. However, I participated as either chief or co-counsel in approximately 8-10 jury trials from 1977-1989 while practicing at Miller, Carson & Boxberger.

- B. Describe the extent of your bench trial experience, if any.

As chief counsel, I have conducted approximately 25 bench trials in State and Federal Courts respecting a variety of insolvency and commercial disputes.

- C. If applicable, describe the nature and extent of your judicial experience (including as a judge *pro tempore*). Include a description of your experience presiding over jury trials, if any.

None.

6. Professional Experience

Include as writing samples, four selections (in total) from the written materials listed below in Subsections 6A – 6C.

- A. If applicable, list up to five trial or appellate briefs and/or judicial opinions you have written. Refer to them by caption, case number, and filing date.

Author, Norfolk & Western Railway Company v. State of Indiana (Ind. App. 1979), 387 N.E.2d 1343 (Brief of Appellant, April 3, 1978).

Contributor / Final Editor, Rouge Steel Industries, Inc. v. OmniSource Corporation (In re Rouge Steel Industries), U.S. District Court for the District of Delaware, Adv. Pro. 06-250 (2007) (Answering Brief of OmniSource Corporation, April 13, 2007).

Contributor / Final Editor, Miller, Trustee v. Ameriquest Mortgage Company (In Re Massie), U.S. Bankruptcy Court, Northern District of Indiana, Adv. Pro. 08-3008 (2008) (Brief in Support of Motion for Partial Summary Judgment, March 8, 2010).

Contributor / Final Editor, In Re Fort Wayne Telsat, Inc. (2011), 7th Circuit Court of Appeals (Case No. 11-2112) (Brief of Appellees, July 27, 2011).

Contributor / Final Editor, Fisher, Trustee v. Ken-Mac Metals (In Re Pace American Enterprises, Inc.), U.S. Bankruptcy Court for Northern District of Indiana, Adv. Pro. 12-03002 (2012) (Defendant, Ken-Mac Metals', Brief in Support of Motion for Partial Summary Judgment, December 14, 2012).

- B. If applicable, list up to five legislative drafts or court rules you have written or to which you contributed significantly. Refer to them by official citation, date, and subject matter.

None.

- C. If applicable, list up to five of your contributions to legal journals or other legal publications. Provide titles, official citations, and a brief description of the subject matter.

Co-author, “Bankruptcy – A Survival Guide for Lenders”, American Bankruptcy Institute (1997). Insolvency trade publication marketed to bankers and other financial professionals.

Co-author, “Bankruptcy – A Survival Guide for Lenders”, 2nd Edition, American Bankruptcy Institute (2008). See above, revised Second Edition.

AK Industries v. Hall, St. Joseph Superior Court, Case No. 71C01-0703-CT-44 (2013). Author, Expert Witness Report in defense of State Court bankruptcy malpractice claims (March 26, 2012).

- D. Identify the five most significant legal matters entrusted to you, whether as a judge or lawyer, and describe why you believe them to be so.

Howard Brembeck, et al. v. Madelyn Wurster, et al., Kosciusko Superior Court No. 1, Case No. 43D01-0609-MI-692 (2013). I represented the Receiver, Ian Rolland, nominated by the Indiana Attorney General, in multi-million dollar litigation and accompanying commercial transactions involving a resort hotel in Syracuse, Indiana. The case was high profile with members of the press attending every hearing and was contentious among the litigants, parties at interest and the general community. I assisted in formulating and implementing strategy resulting in the successful sale of the hotel and surrounding property to a solvent third-party buyer (who has since rehabilitated the resort property) and settled the underlying litigation. The case is considered a “feather in the cap” of the Indiana Attorney General’s Office.

In Re Monon Corporation. At the time, the largest Chapter 11 ever filed in the Northern District of Indiana. As co-counsel for the Debtor, I assisted in winding down Monon’s business affairs as well as negotiating / obtaining court approval of its eventual sale to a solvent third-party buyer. The case gained some notoriety, due to alleged criminal activity by certain of the Debtor’s officers and, as White County’s largest employer, the loss of several thousand jobs.

In Re Rouge Industries. A Delaware bankruptcy preference Adversary Proceeding against a major firm client. As chief counsel, I assisted in obtaining summary judgment for the client under unusual factual circumstances, as well as defended such judgment on appeal in both the District Court and Third Circuit Court of Appeals. The matter was eventually settled on a favorable basis.

In Re LTV Corporation. I represented a corporate member of the Executive Committee of the Creditor's Committee in the winding down and successful sale of a large bankrupt steel company in northern Ohio. I consider the matter significant because of its size, myriad of unusual and unique legal issues, contentiousness, number of parties involved, and the client's potential \$10 million preference exposure. Ultimately, the potential preference claims were settled for a nominal amount.

In Re Qualitech, Inc. A large Chapter 11 case filed in Indianapolis. As chief counsel, I represented both a major vendor and, later, prospective purchaser. I consider this case significant, because over 100 lawyers were involved, seemingly endless travel was required, and I participated in widespread and complicated negotiations with multiple parties at interest toward a potential \$150 million+ acquisition of Debtor's assets. Ultimately, my client was unable to purchase the assets out of bankruptcy, but later did so when the bankruptcy buyer failed to make the business profitable.

Scott v. Durham, et al., (a/k/a "The Great Duesenberg Caper"). From 2009-14, I represented a New York financial institution in Federal litigation arising from the alleged fraudulent sale of William Randolph Hearst's 1930 Duesenberg. The case is significant to me not only because of its convoluted fact pattern, but also because the ultimate "culprit" was Tim Durham, Indianapolis' notorious financier and avid antique car collector. After 5 years, all phases of the case settled, during which Mr. Durham was convicted of several Federal crimes unrelated to this litigation.

7. Efforts to Improve the Legal System, Administration of Justice, or Society

- A. Describe your efforts, achievements, or contributions (including written work, speeches, or presentations) toward the improvement of the law, the legal system, or the administration of justice. Include a description of any management or leadership roles you undertook to achieve these goals, and describe any specific instances in which your collaborative efforts helped achieve these goals.

As a Past-President of both the Indiana State Bar Association (ISBA) and Indiana Continuing Legal Education Forum (ICLEF), I worked extensively from 1989-2000 to represent the interests of Indiana lawyers, and promote bench-bar and bar-public relations. In my leadership years, 1985-2000, as a council member and eventually Chair of ISBA's Young Lawyers Section, several separate terms as a member of ISBA's Board of Managers, President of ICLEF and as Vice-President, President-Elect, and President of ISBA, I viewed one of my roles as promoting programs dedicated to improving the public's access to the legal system, improving the relationship between the practicing bar, the public, and judiciary, and championing the administration of justice on as many levels as possible. ISBA's various Sections and Committees created the actual substantive programs to do so, while I did my best to assure they were implemented and publicized. As ISBA President, I traveled throughout the State and gave approximately fifty (50) speeches and presentations to the public and bar regarding the importance of the rule of law, how the best interests of the public and lawyers are necessarily intertwined, and promoting the administration of justice in Indiana. At the end of my

tenure, I was recognized with Sagamore of the Wabash status by then Gov. Frank O'Bannon, specifically for contributions to Indiana's citizens, lawyers and Courts.

- B. Describe your efforts, achievements, or contributions (including written work, speeches, or presentations) concerning civic, political, or social issues. Include a description of any management or leadership roles you undertook in this area, and describe any specific instances in which your collaborative efforts in this area led to a successful result.

See answer to A. above. In essence, the role of ISBA's President is to promote the interests of Indiana's lawyers and act as ISBA's spokesperson in both public and private sectors. While not specifically pertaining to civic, political or social issues, I have been recognized by my peers for professional achievement:

Listed, "Best Lawyers in America" (1993-).

Listed, "Indiana's Super Lawyers" (all editions, approximately 10 years).

Listed, "Fort Wayne Best Lawyers", including "Bankruptcy and Creditors Lawyer of the Year".

Listed, "Super Lawyers in America".

- C. Describe your efforts, achievements, or contributions (including written work, speeches, or presentations) to improve your local, state, or national community through charitable work or public service. Include a description of any management or leadership roles you undertook in this area, and describe any specific instances in which your collaborative efforts in this area led to a successful result.

See answers to A. and B. above.

- D. Describe the nature and extent of any *pro bono* legal services you have contributed.

I am currently Chair of Barrett McNagny's Pro Bono Committee. Additionally, over the past five (5) years, I have contributed approximately 10-20 hours per year in pro bono legal services.

- E. Indicate your experience teaching law. Provide the dates, names of institutions or programs, and a description of the subject matter taught.

Over the years, I have given 150 presentations to lawyers, trade organizations and related entities on a variety of insolvency-related and commercial law topics on local, State, regional and national levels. Each such presentation required preparation of written materials, some of which I prepared myself and some of which I acted as co-author and final editor. I have taught primarily for ICLEF, National Business Institute, and the American Bankruptcy Institute as well as a variety of non-legal trade organizations.

8. Memberships and Other Activities

- A. List any memberships and offices you have held in professional organizations, including dates and descriptions of the purposes of the organizations and of your involvement.

Indiana State Bar Association (1977-): President (1999-00); President-Elect (1998-99); Vice President (1997-98); Board of Governors (1997-01; 93-95; 88-89); Publicity Committee (2003); Chair, Membership (1997-98); Accelerated Dispute Resolution (1987-95); Nominating Committee (1991-92; 2008-09); Young Lawyers Section Council (1982-89); Chair (1988-89); Chair-Elect (1987-88); Secretary-Treasurer (1986-87); Executive Council (1985-89); Bankruptcy Section (1982-); Fee Dispute Resolution Committee (2006)

Indiana Continuing Legal Education Forum: President (1998-1999); Director (1989-90); Projects Committee (1990-91; 93-94)

- Continuing legal education

Fellow, Indiana Bar Foundation (1989-)

- Charitable

American Bar Association (1977-2014): Corporation, Banking and Business Law Section (1977-2014); Young Lawyers Division, Vice Chair, Debtor-Creditor Relations Committee (1988-89); Executive Committee (1986-87); Vice-Chair, Accelerated Dispute Resolution Committee (1988-89)

Seventh Circuit Bar Association (approximately 1985-): Indiana Chair, Bankruptcy Committee (1991-03); Judicial Council Bankruptcy Appellate Panel Study Committee (1995)

Allen County Bar Association (1977-): Director (2004-2008); Bankruptcy Section (1997-)

American Bankruptcy Institute (1990-): Director (1994-00); Co-Chair, Membership Committee (1994-99)

- **One of the largest (if not the largest) insolvency trade organizations in the world.**
- **Dedicated to educating public, bar and especially bench regarding insolvency-related issues**

Central States Bankruptcy Conference, Advisory Board (1996-03)

- **Yearly seminar – insolvency education**

Great Plains Bankruptcy Conference, Board of Directors (1992-95)

- **Yearly seminar – insolvency education**

Indiana University School of Law (Bloomington), Board of Visitors (1998-00)

Indiana University School of Law (Indianapolis), Board of Visitors (1998-00)

Fellow, American College of Bankruptcy (2003-)

- **One of eight (8) from Indiana.**
- **An insolvency not-for-profit established to recognize distinguished bankruptcy professionals through an invitation only, peer nominating process and to assist / fund projects enhancing the highest quality of bankruptcy practices.**
- **Engaged primarily in insolvency education and funding of charitable projects.**

- B. List any memberships and offices you have held in civic, charitable, or service organizations, including dates and descriptions of the purposes of the organizations and of your involvement.

From approximately 1986-2000, I was a member of the Board of Directors of the Central YMCA of Fort Wayne, and I acted as the Board's President from 1994-96. The YMCA's basic mission is to promote both wellness and Christian values throughout local communities. I was a Junior Achievement classroom consultant at two area high schools from 1995-97, teaching personal economics to high school freshmen as part of JA's "Success Quest" program. From 1978-1990, I was a member of the Board of Directors of the Fort Wayne Foster Park Little League and acted as the League's player agent.

- C. List any memberships you hold in social clubs or organizations. If any restrict its membership on the basis of race, sex, religion, or national origin, please describe your efforts within the organization to eliminate restrictions.

Other than the YMCA, as described above, and several athletic organizations, none.

- D. Describe your hobbies and other leisure activities.

For almost 40 years, I have been an avid endurance athlete. I have run 18 marathons, including six Boston Marathons; I have also competed in approximately 100 other road races of shorter length and have run approximately 57,000 miles in that period of time. As I aged, I gravitated toward long-distance cycling and have ridden approximately another 25,000 miles. For approximately 20 years, I have taught indoor cycling a/k/a “spinning” at the Fort Wayne Central YMCA, and currently teach 4 times per week, including 2-hour “endurospins” on Sundays. I also enjoy reading historical non-fiction and fiction and, of course, am interested in all things baseball.

9. Legal Proceedings

- A. List any lawsuits or legal proceedings in any jurisdiction, including but not limited to bankruptcies, dissolutions, and criminal matters to which you have been a party. Provide dates, case numbers, courts, names of other parties, and, if needed, a brief explanation. (If minor children are involved [i.e. an adoption], use initials only.)

None.

- B. If you ever have been arrested or cited for any violation of the law other than for routine traffic violations, provide dates, jurisdictions, and an explanation of the event and its resolution.

None.

- C. If you have been disciplined or cautioned, formally or informally, by the Indiana Supreme Court Disciplinary Commission, by the Indiana Commission on Judicial Qualifications, by the Indiana Supreme Court, or by similar entities in any other jurisdiction, identify each instance by date, case number (if applicable), and describe the circumstances and the nature of the outcome or resolution.

None.

- D. If you have any outstanding federal, state, or local tax obligations, please itemize and explain.

None.

10. References

- A. Provide the names of three attorneys who have been your professional adversaries in your practice or who have litigated substantial cases in your court and who would be in positions to comment on your qualifications for appointment to the Indiana Supreme Court (contact information to be included in Part Two of this application).

Elliott Levin

Gordon Gouveia

R. William Jonas

- B. Provide the names of three professional references other than those listed in Subsection 10A (contact information to be included in Part Two of this application).

Hon Deborah L. Thorne

Hon Melissa S. May

Michael P. O'Hara

- C. Provide the names of three personal references other than those listed in Subsection 10A or 10B (contact information to be included in Part Two of this application).

C. Erik Chickedantz

Joseph D. O'Connor, Jr.

E. Spencer Walton, Jr.

11. State Police Release Form and Photograph

- A. Complete a State Police release form printed on green paper (you may obtain the release form by contacting the Nominating Commission Office at 317-232-4706). Include the release form with the original application only and not with the copies.

See attached.

- B. Attach a recent photograph of you to the front of the original application and to each copy of your application. (This allows the Commission members to put a face with a name if you are interviewed in person.)

Date

Applicant Signature

Thomas P. Yoder

Printed Name